IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION LD.NO.2144 OF 2004

Bhupendra Vasani & Ors. ...Petitioners.
Vs.

The Brihanmumbai Mahanagar Palika & Anr. ...Respondents.

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Mr. J.Reis with Mr. A.C. Singh i/b. D.R. Shah for the Petitioners.
Mr. N. V. Walawalkar with Ms.A. K. Savla for Respondent No.1.
Mr.Niranjan Pandit, AGP for Respondent No.2.

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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

October 5, 2004.

P.C.:

In these proceedings under Article 226 of the Constitution of India, the Petitioners, inter alia, seek a declaration of invalidity of the first variation of the final Town Planning Scheme for Borivali and consequential relief in respect of Final Plot No.5 thereof.

2. The relief that has been sought cannot granted for more than one reason. The structures in question, are situated on Final Plot No.5 which is reserved for a market under Town Planning

Scheme-II, Borivali. In accordance with the provisions of the Maharashtra Regional and Town Planning Act, 1966, the State Government issued a notification dated 6th March 1996, which thereupon, came into force on 15th April 1996. The scheme was published in the Gazette on 7th March 1996. Under Section 88 of the Act, on and after the date on which the final scheme comes into force, all the lands required by the Planning Authority under the scheme shall unless it is otherwise determined, vest absolutely in the Planning Authority, free from all encumbrances and all the rights in the original plots which have been reconstituted shall be determined and the reconstituted plots shall become subject to the rights settled by Arbitrator. In the present case, after the scheme came into force, a notice under Section 89 was issued to the occupiers on 22nd September 1998 to remove their structures.

3. This petition has been filed on 29th July 2004, eight years after the scheme has come into force and there is a gross and unexplained delay in moving the Court. In the affidavit in reply, which has been on behalf of the Respondents, it has been stated that several personal hearings were convened in order to enable the Petitioners to produce documents showing the existence of the

structures as of 1st April 1962. Despite several opportunities that have been adverted to in paragraph 8 of the reply, the Petitioners failed and neglected to produce any such documentary material showing the existence of the structures prior to the datum line. Thereupon, a further notice under Section 90 of the Act, was issued on 8th October 2003. The petitioners challenged the aforesaid notice by filing a suit before the City Civil Court. The Trial Court declined to grant an interim injunction and the appeal that was filed before this Court, was dismissed by an order dated 15th April 2004 of a Learned Single Judge. The Learned Single Judge observed that the Town Planning Scheme was sanctioned in 1996 and that the Arbitrator in the statement of valuation and re-distribution, which was produced in the Court, indicated that Final Plot No.5 belonged to the Corporation. The Learned Single Judge noted that the scheme which had come into force in 1996 has not been challenged. It is only after the judgment of the Learned Single Judge dismissing the appeal against the impugned order of the City Civil Court that a second round of proceedings has now been pursued for challenging the validity of the scheme. We are of the view that such a challenge cannot be entertained at this stage, after the lapse of nearly 8 years of the enforcement of the scheme.

That apart, from the Minutes of the proceedings before the Arbitrator dated 27th June 1983 (Exh.H to the Petition) which have been placed before the Court, it is evident that the Petitioners have conceded that the land under dispute had *de jure* vested in the Municipal Corporation, in pursuance of the principal scheme which was sanctioned in the year 1931. Therefore, considered from all its perspectives, the petition does not warrant interference of this Court under Article 226 of the Constitution. The Petition shall accordingly stand dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.